

ASSEMBLY BILL

No. 1081

Introduced by Assembly Member Matthews

February 22, 2005

An act to amend Sections 110050, 110466, 110485, 111130, 111825, and 111855 of, and to add Section 110471 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1081, as introduced, Matthews. Sherman Food, Drug, and Cosmetic Law: bottled or vended water.

Existing law, the Sherman Food, Drug, and Cosmetic Law, requires the State Department of Health Services to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act. A violation of these provisions is a crime. Existing law requires each person upon first engaging in the food production business to register with the department and pay the required registration fee, and until January 1 2006, a related surcharge.

This bill would increase the related inspection fees and would increase related criminal penalties for violations, including, but not limited to, penalties for intentional adulteration. The bill would extend the surcharge authority until January 1, 2011, and would make conforming changes. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law prohibits operation of a water-bottling plant, source, or distributor without a license issued by the department and authorizes the department to charge related licensing fees.

This bill would increase the fees, would authorize the department to review and adjust the fees every 2 years, and would provide that the

fees are to be deposited in the Food Safety Fund to be used upon appropriation by the Legislature for the purposes of the program, and would make conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 110050 of the Health and Safety Code is
2 amended to read:

3 110050. The Food Safety Fund is hereby created as a special
4 fund in the State Treasury. All moneys collected by the
5 department under subdivision (c) of Section 110466 and Sections
6 110470~~and~~, 110471, 110485, and 111130, and under Article 7
7 (commencing with Section 110810) of Chapter 5 shall be
8 deposited in the fund, for use by the department, upon
9 appropriation by the Legislature, for the purposes of providing
10 funds necessary to carry out and implement the inspection
11 provisions of this part relating to food, *licensing, inspection,*
12 *enforcement, and other provisions of Article 12 (commencing*
13 *with Section 111070) relating water*, the provisions relating to
14 education and training in the prevention of microbial
15 contamination pursuant to Section 110485, and the registration
16 provisions of Article 7 (commencing with Section 110810) of
17 Chapter 5.

18 SEC. 2. Section 110466 of the Health and Safety Code is
19 amended to read:

20 110466. (a) Commencing January 1, 2000, the department
21 shall use the resources provided by the registration fees assessed
22 by this article to inspect new and registered food processing
23 facilities to determine compliance with this part. The department
24 shall target the inspections and adjust their scope, depth, and
25 frequency based on the department's statewide assessment of
26 public health risk potential. In assessing public health risk

1 potential, the department shall consider, at a minimum, the
2 potential and actual health risks associated with processed foods
3 manufactured, packed, or held in this state, and the food safety
4 practices and compliance histories of persons who manufacture,
5 pack, or hold processed foods in this state.

6 (b) Commencing January 1, 2001, the department, pursuant to
7 this chapter, shall conduct an annual inspection of each registered
8 food processing facility and inspect each new food processing
9 facility prior to issuing a new registration pursuant to Section
10 110460. This annual inspection requirement may be adjusted or
11 waived based on an assessment of the food processing facility
12 pursuant to subdivision (a).

13 (c) The department may perform one or more reinspections of
14 each new and registered food processing facility as necessary to
15 prevent repeated or continuing violations of this part and for the
16 purposes of approving the issuance of a new registration. ~~The~~
17 ~~department shall not charge a separate fee for a first reinspection.~~
18 ~~The department shall charge a fee of seventy-five dollars (\$75)~~
19 ~~one hundred dollars (\$100) per hour to cover the costs of~~
20 ~~performing the second and subsequent reinspections of the same~~
21 ~~food processing facility within the same registration any~~
22 ~~12-month period.~~

23 SEC. 3. Section 110471 is added to the Health and Safety
24 Code, to read:

25 110471. (a) Commencing January 1, 2006, the department
26 shall make a one-time 15 percent cost-of-living adjustment to the
27 registration fees established in Section 110470.

28 (b) Commencing January 1, 2006, every person engaged in the
29 manufacture, packing, or holding of processed food in this state
30 that is subject to the requirements of Part 120 or 123 of Title 21
31 of the Code of Federal Regulations shall pay two hundred fifty
32 dollars (\$250) in addition to their annual registration fee paid
33 pursuant to Section 110470.

34 (c) Revenue received pursuant to this section shall be
35 deposited into the Food Safety Fund created by Section 110050.
36 A penalty of 10 percent per month shall be added to any fee not
37 paid when due.

38 (d) Upon appropriation, the additional fee deposited in the
39 Food Safety Fund shall be used by the department to conduct
40 inspections and reviews of those facilities required to have

1 Hazard Analysis Critical Control Point (HACCP) plans or
2 Standard Sanitation Operating Procedures (SSOPs).

3 SEC. 4. Section 110485 of the Health and Safety Code is
4 amended to read:

5 110485. (a) Every person who is engaged in the manufacture,
6 packing, or holding of processed food in this state shall pay a
7 food safety fee of one hundred dollars (\$100) to the department
8 in addition to any fees paid pursuant to Section 110470.

9 (b) Revenue received pursuant to this section shall be
10 deposited in the Food Safety Fund created pursuant to Section
11 110050. A penalty of 10 percent per month shall be added to any
12 food safety fee not paid when due.

13 (c) Upon appropriation, the food safety fees deposited in the
14 Food Safety Fund shall be used by the department to assist in
15 developing and implementing education and training programs
16 related to food safety. These programs shall be developed in
17 consultation with representatives of the food processing industry.
18 Implementation shall include education and training in the
19 prevention of microbial contamination.

20 (d) This section does not apply to companies exclusively
21 involved in flour milling, dried bean processing, or in the drying
22 or milling of rice, or to those individual registrants the director
23 determines should not be assessed because substantial economic
24 hardship would result to those registrants. For the purposes of
25 this subdivision, the substantial hardship exemption shall be
26 extended only to registrants whose wholesale gross annual
27 income from the registered business is twenty thousand dollars
28 (\$20,000) or less.

29 (e) This section shall remain in effect only until January 1,
30 ~~2006~~ 2011, and as of that date is repealed, unless a later enacted
31 statute, that is enacted on or before January 1, ~~2006~~ 2011, deletes
32 or extends that date.

33 SEC. 5. Section 111130 of the Health and Safety Code is
34 amended to read:

35 111130. (a) The department shall charge and collect a fee for
36 each license application submitted in accordance with the fee
37 schedule in Table 1, that shall be an amount reasonably necessary
38 to produce sufficient revenue to enforce this article. The fees
39 collected shall be adjusted annually as required by Section

100425. New applicants for a water bottling plant license shall pay Category 2 fees for the first license year.

(b) The water-bottling plant and bottled water distributor categories shall be determined by dividing by 52 the number of gallons produced or shipped into California during the previous year. If the result is an average of 5,000 gallons or less per week, the firm is Category 1. If the average exceeds 5,000 gallons per week, the firm is Category 2.

Table 1
License Fees

License Class	Annual Fee
Water-Bottling Plant	
Category 1	\$310 \$455
Category 2	875 \$1,280
Water-Vending Machine	10.25 \$15
Water Hauler	310 \$455
Retail Water Facility	310 \$455
Private Water Source Operator	310 \$455
Bottled Water Distributor	310 \$455

(c) The department shall review the fees authorized pursuant to this section, as adjusted pursuant to Section 100425, every two years and may, by regulation, decrease or increase these fees as necessary, but in no case may the total fees exceed the costs of the program. A penalty of 10 percent per month shall be added to any license fee when the fee is not paid when due.

(d) All fees and penalties collected pursuant to this article shall be deposited into the Food Safety Fund created pursuant to Section 110050 and, upon appropriation by the Legislature, shall be used to carry out the purposes of this article.

(e) The owners or operators of each water-bottling plant, retail water facility, private water source, each water hauler in

1 California and bottlers or distributors of water bottled
2 out-of-state shall make application for a license on forms
3 provided by the department. Applications and license fees shall
4 be submitted for each calendar year.

5 ~~(d)~~—

6 (f) Each water-vending machine owner or operator shall make
7 application each calendar year for a license for all machines on
8 forms provided by the department. A decal or seal provided by
9 the department indicating a license fee has been paid shall be
10 affixed in a prominent place to each water-vending machine in
11 service.

12 SEC. 6. Section 111825 of the Health and Safety Code is
13 amended to read:

14 111825. (a) Any person who violates any provision of this
15 part or any regulation adopted pursuant to this part shall, if
16 convicted, be subject to imprisonment for not more than one year
17 in the county jail or a fine of not more than one thousand dollars
18 (\$1,000), or both the imprisonment and fine.

19 (b) *Notwithstanding subdivision (a), any person who violates*
20 *Section 111865 by removing, selling, or disposing of an*
21 *embargoed food, drug, device, or cosmetic without the*
22 *permission of an authorized agent of the department or court*
23 *shall, if convicted, be subject to imprisonment for not more than*
24 *one year in the county jail or a fine of not more than ten*
25 *thousand dollars (\$10,000), or both the fine and imprisonment.*

26 (c) If the violation is committed after a previous conviction
27 under this section that has become final, or if the violation is
28 committed with intent to defraud or mislead, *or if the person*
29 *committed a violation of Section 110625 or 111300 that was*
30 *intentional or that was intended to cause injury*, the person shall
31 be subject to imprisonment for not more than one year in the
32 county jail, imprisonment in state prison, or a fine of not more
33 than ten thousand dollars (\$10,000), or both the imprisonment
34 and fine.

35 SEC. 7. Section 111855 of the Health and Safety Code is
36 amended to read:

37 111855. (a) If any person violates any provision of this part,
38 or any regulation adopted pursuant to this part, the department
39 may assess a civil penalty against that person as provided by this
40 section.

(b) The penalty may be in an amount not to exceed one thousand dollars (\$1,000) per day *unless the penalty is for a violation of Section 111825, in which case the penalty may be in an amount not to exceed ten thousand dollars (\$10,000) per day.* Each day a violation continues shall be considered a separate violation.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.

(d) Any person served with a complaint pursuant to subdivision (c) of this section may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in which case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(e) Any hearing required under this section shall be conducted pursuant to the procedures specified in Section 100171, except to the extent they are inconsistent with the specific requirements of this section.

(f) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(g) Within 30 days after service of a copy of a decision issued by the director after a hearing, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this part or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.